In my opinion the plaintiff has failed to make out a case for aggravated damages. To succeed in his claim for aggravated damages, the plaintiff must prove that the defendants had not acted honestly but were actuated by some indirect or ulterior motive e.g. malice in the proper acceptation of that term. The words complained of were published in a report of a judicial proceeding and the mere proof that they are false is not evidence of malice. The fact that the defendants had no reasonable grounds for believing in their truth is again not, by itself, evidence of malice. At the highest, there is evidence of negligence or carelessness but that again is insufficient to warrant the award of aggravated damages. The question raised is really as to the state of mind of the defendants when they published the alleged libel, the question being whether they published it in the spirit of malice. In my judgment there is no evidence of dishonesty, personal spite, ill will or any wrong or improper motive on the part of the defendants and the words complained of are therefore not coloured by malice. Accordingly, the claim for aggravated damages fails. The plaintiff is entitled to only compensatory damages."

We too are satisfied, on a review of the evidence, that there is no malice on the part of the respondents. Except for the use of the word "probe" in the headlines, and the publication of the appellant's photograph beneath the headlines which are the gravamen in the libel, there is nothing in the contents of the report of November 12, 1975 which can be considered to even hint of malice on the part of the respondents. The fact is on that day there was an application pending before the Honourable Chief Justice by Tay Beng Swee, a member of the public, against the Law Society for an order for the Society to conduct an inquiry into the professional conduct of the appellant. In these circumstances, taking the report as a whole, we agree with the trial judge that at the highest there is only evidence of negligence on the part of the respondents.

Then again, on the topic of malice, we have considered the subsequent conduct of the third respondents, of the three publications in the *New Nation* on November 21, 1975, August 12, 1976 and August 27, 1979 respectively in which are included apologies. The view we take of these three publications is that they rebut any malice on the part of the respondents in respect of the offending publication.

Next, counsel for the appellant submitted that the trial judge had erred in law in making the distinction between "aggravated damages" and "compensatory damages", the argument being that as a result he had applied wrong principles in the assessment of the damages awarded to the appellant.

The submission is founded on the statement of the trial judge where at the end of the passage referred to above he said: "Accordingly, the claim for aggravated damages fails. The plaintiff is entitled to only compensatory damages". We reject the submission as it altogether ignores the whole passage where the trial judge at the beginning pointedly says that he is dealing with the topic of "aggravated damages on the ground of malice". He explains the meaning of malice in the law of libel, he describes the quantum of proof of malice required for aggravated damages, and he finds as a fact no evidence of malice. He then says: "Accordingly, the claim for aggravated damages fails." The reference here is clearly to aggravated damages on the ground of malice. He concludes: "The plaintiff is entitled only to compensatory damages." In the context it can only mean that in determining the compensatory damages the appellant is not entitled to anything on the ground of malice.

Finally, whilst it was conceded for the appellant that the trial judge had properly taken all material factors into account which entitled the appellant to aggravated damages, he had not awarded the appellant an adequate amount as he had erroneously believed that only malice qualified for aggravated damages and not the other material factors. For the reasons we have given we find that there is no merit in the submission. We are satisfied that the trial judge had properly directed himself, and there is no reason for us to interfere with the award that he has made.

The appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Murphy & Dunbar; Drew & Napier.*

THE FIRST NATIONAL BANK OF CHICAGO v. HOW LEE REALTY PTE. LTD. & ORS.*

[O.C.J. (D'Cotta J.) July 3, 1980]

[Singapore — Civil Suit No. 1464 of 1977]

Banking — Bank granting overdraft facilities — Guarantee for unlimited liability — Guarantor illiterate — Plea of non est factum — Whether guarantor exercised reasonable care when signing document.

The plaintiffs on April 18, 1973 granted overdraft facilities amounting to $2,520,198.91 to the 1st defendant. The said facilities were secured by a mortgage of the land and property known as No. 10 Tomlinson Road, and were guaranteed by the 2nd and 3rd defendants. By a Deed of Guarantee of April 18, 1974 made between the Bank and the 4th defendant the said overdraft facilities were extended for a further period of one year. Summary judgment was obtained by the Bank against the 1st, 2nd and 3rd defendants but leave to defend was granted to the 4th defendant.

The facts revealed that the 4th defendant was illiterate. She had been a land broker for 17-18 years since 1962. In the course of her business she met the 2nd defendant and advised him to purchase the said property. She advanced the 2nd defendant money whenever he could not pay the interest on the overdraft for which he offered her a 25% interest in the said property. Before the said guarantee was signed, the 2nd defendant had told the fourth defendant that the Bank suggested that she be the guarantor. The 2nd defendant also said that he would give her a 50% share in the said property. The 4th defendant claimed that she was happy to sign the guarantee as she regarded it as proof of her 50% holding in the said property. The 2nd defendant did not explain the guarantee to her. She did not know that the document which she signed was a guarantee for an unlimited amount otherwise she would never have signed it.

The said guarantee was later witnessed and signed by a lawyer, who happened to be the 4th defendant's son-in-law, in her absence. The 4th defendant claimed that the contents of the guarantee were never explained to her by either the lawyer or the bank. She pleaded *non est factum.*

Held, dismissing the plaintiff's claim: (1) there was a radical or fundamental difference from what the 4th defendant believed she was signing and the document upon which she was sued;

(2) having regard to all the conditions prevailing at the time when the 4th defendant signed the document, the latter had, in so signing, acted reasonably and prudently; she had successfully established the plea of *non est factum;*

(3) the plaintiffs had appointed the 2nd defendant their agent in obtaining the 4th defendant's signature. They were

* The above judgment was reversed by the Court of Appeal on May 20, 1981.

therefore liable for the 2nd defendant's default as their agent in failing to read and explain the contents of the Guarantee to the 4th defendant.

Cases referred to:-

(1) *Saunders* v. *Anglia Building Society* [1970] 3 All E.R. 961, 979.

(2) *Foster* v. *Mackinnon* (1869) L.R. 4 C.P. 704.

CIVIL SUIT.

F. Mallal for the plaintiffs.

J.B. Jeyaretnam for the 4th defendant.

Cur. Adv. Vult.

D'Cotta J.: The plaintiffs, the First National Bank of Chicago (hereinafter called "the Bank") on April 18, 1973 granted overdraft facilities amounting to $2,520,198.91 to How Lee Pte. Ltd. (hereinafter called "the 1st defendant") which said facilities were secured by a mortgage of the land and property known as No. 10 Tomlinson Road (hereinafter called "the said property"). The overdraft facilities accorded to the 1st defendant were guaranteed by the 2nd and 3rd defendants. By a Deed of Guarantee dated April 18, 1974 (hereinafter called "the Guarantee") and made between the Bank and the 4th defendant (hereinafter called "Madam Tan") these overdraft facilities were extended for a further period of one year. Summary judgment was obtained by the Bank against the 1st, 2nd and 3rd defendants but leave to defend was granted to Madam Tan. The Bank now claims the sum of $2,520,198.91 together with interest thereon against Madam Tan on the Guarantee.

The undisputed facts of the case are as follows: — The Bank advanced $2,500,000 to the 1st defendant for the purchase of the said property by way of overdraft facilities which was secured by a mortgage of the said property. The loan facilities were utilised to the full. Edward Kong (a director of the 1st defendant company) paid the monthly interest but whenever he was unable to do so he turned to Madam Tan for assistance. When the time came for renewal of the overdraft i.e. around April 1974 the Bank were agreeable to extend the overdraft facilities for a further period of one year but suggested that Madam Tan be included as a 3rd guarantor; Edward Kong approached Madam Tan who agreed to do so as he offered her a 50% share in the said property. The Guarantee was subsequently signed by Madam Tan and witnessed by Mr. Lim Sin, an advocate and solicitor. Thereafter interest payments continued to be paid until about the end of 1974 when Edward Kong was in difficulties as regards payments of monthly interest at which time the Bank became anxious about the repayment of the entire loan. Efforts were made by the Bank, Edward Kong and Madam Tan to sell the said property but they proved unsuccessful. The property was eventually sold to the Urban Redevelopment Authority for $1,024,955.

Before proceeding to deal with the evidence, it may be convenient at this stage to introduce to the scene Mr. Matthew Lim of whom frequent mention is made in the course of the proceedings and who although not a witness nevertheless played a most important role in that he was at the relevant period the Manager of the Bank and the person whom Edward Kong dealt with in regard to overdraft facilities, payment of interest and sales generally.

Learned counsel for the defence submitted that there is only one material fact in dispute and this revolves around what was said by Mr. Lim Sin (PW1) to Madam Tan when he telephoned her on the afternoon of April 18, 1974 before he attested her signature to the Guarantee. In this connection I refer to the evidence of Mr. Lim Sin: —

"Some time in 1974 Mr. Kong Kee Yee (Edward Kong) came to my office. He is known to me. He showed me a copy of AB2 and said it had been signed by Madam Tan Lai Wah who is my mother-in-law and requested me to sign as her witness. I therefore telephoned Madam Tan to ask her to confirm that she had signed the guarantee and further asked her whether she understood everything inside the guarantee. She said that Kong Kee Yee had already explained to her and that he had already signed a similar guarantee and all she wanted me to do was to witness her signature. I told her that as a lawyer I would persuade her to come to my office so that I could explain to her the contents or I could even call on her at her office to explain to her and a bank guarantee is a very serious document. Her reply was she was totally clear and did not require further explanation. Her only requirement was for me to witness her signature. I then signed the guarantee as her witness. Mr. Edward Kong is personally known to me. Madam Tan told me over the telephone that Edward Kong had also signed. My firm was acting for the 1st defendant but my partner attended to their matters. My firm acted for the 1st defendant in connection with a piece of land at Tomlinson Road. I handed the guarantee which I witnessed to Mr. Edward Kong. Mr. Kong was before me when I spoke to Madam Tan on the telephone."

Mr. Lim Sin was cross-examined on his telephone conversation with Madam Tan and below is a *verbatim* report of the questions put to him and his replies thereto: —

"*Q.* What did you tell Madam Tan.

A. I told her in Hokkien (translated) —

'Edward Kong has handed me a bank guarantee executed by you and has asked me to sign as witness. This document is a very important document and it is preferable if you call at my office for me to explain to you. She said Edward Kong has already explained the contents to her and he has also signed a bank guarantee, so all that is necessary is for you to witness my signature. I then told her: 'If it is because you are busy I can even call at your office to explain it to you'. She said Edward Kong had explained it to her and she knew what it was about, all she wanted me to do was to witness her signature.'

Q. So you then signed.

A. Yes.

Q. Nothing further was discussed.

A. I don't recall.

Q. You told her a bank guarantee was a very serious document.

A. Yes.

Q. Edward Kong was with you.

A. Yes in front of me.

Q. He understood all you said to Madam Tan.

A. I believe so.

Q. Did it occur to you it would have been better for her signature to have been witnessed by someone who is not the bank's solicitors.

A. I don't think so; if it occurs again I will do it again.

Q. My instructions are this telephone conversation was sweet and short.

A. Whatever it is, it is what I told you.

Q. My instructions are you said to her in Hokkien — 'Did Edward Kong bring you a guarantee to sign and were you happy to sign'.

A. That is not so.

Q. She said in reply 'That is so I have already signed'.
A. Partly so because she told me she had already signed it.
Q. My instructions are that was all that passed in that telephone conversation between you and her.
A. That is not true.
Q. My instructions are at no time did you tell her that you would explain to her.
A. That is not true."

Edward Kong, witness for the Bank, in evidence related how he came to purchase the said property and that for the first year he paid interest regularly but if and when he was short of money he would borrow from Madam Tan. Some time around April 1974, the Bank informed him that they were prepared to extend the overdraft facilities provided he paid 2% commitment fees as well as provide additional security or guarantor acceptable to the Bank. The Bank informed him they were prepared to accept Madam Tan as guarantor. Edward Kong went on to say that he approached Madam Tan with a request that she be his guarantor for extension of another year's facilities to be given by the Bank. To this Madam Tan replied that the land was good value at $130 p.s.f. and agreed to be guarantor. On the Bank agreeing to accept Madam Tan they gave him a form. He gave this form to Madam Tan who signed it, whereupon he took it to Messrs. Lim Sin & Thiam Beng. I now append Edward Kong's evidence *verbatim* on his attendance at the office of Messrs. Lim Sin & Thiam Beng: —

"I took it to the lawyers for either one of them to witness Madam Tan's signature. I could not find Thiam Beng but Lim Sin was there. I gave him the form and told him Madam Tan had signed it and the Bank wanted me to get Lim Sin or Thiam Beng to witness Madam Tan's signature. Lim Sin took the form and telephoned to Madam Tan in my presence. He spoke to Madam Tan in Hokkien. I understood what was said when Lim Sin spoke to Madam Tan. He said in Hokkien — "Mummy, Edward Kong is in front of me with a bank guarantee form on the land 10 Tomlinson Road. Are you happy with the form you signed'. I did not hear what Madam Tan had to tell him. Lim Sin put down the phone and said to me — 'She is happy what she signed, I will sign as a witness'. AB2 and 3 is the guarantee. I went to the plaintiffs and gave the form to the manager, Mr. Lim. Plaintiffs agreed to renew the overdraft facilities."

On being cross-examined on his interview with Mr. Lim Sin regarding the signing of the Guarantee, the following are the replies given by Edward Kong to the questions put to him: —

"*Q.* What did you tell Madam Tan.
A. I told her in Hokkien that this is the guarantee form on the Tomlinson Road property; I reminded her about the Bank requiring a guarantor; she just signed the guarantee.
Q. Did you tell her you had just come from lunch with Mr. Lim and Thiam Beng.
A. Yes.
Q. Did you tell her Mr. Lim wanted her to sign the form which was a guarantee on the Tomlinson Road property.
A. Yes.
Q. Did she ask any questions.
A. No.
Q. Did you tell her you were in a hurry.
A. I might have told her as soon as you sign this I must rush to the lawyer to sign it.
Q. My instructions are you said, come on, come on, this is the Tomlinson Road guarantee you just sign.
A. I am not sure what I said, I might have used it; I might not.
Q. She signed all 3 copies.
A. Yes.
Q. When you signed it did you read the form.
A. No.
Q. Did you explain to Madam Tan the contents of the document.
A. No I did not explain.
Q. Did she try to read it.
A. No.
Q. Did she ask for it to be read to her.
A. No she did not.
Q. Did you tell her it was an unlimited guarantee.
A. No I didn't.
Q. You knew what an unlimited guarantee is.
A. At that time I didn't; now I am being sued I know.
Q. That's all that you said.
A. Yes.
Q. Then you proceeded with the 3 forms to the office of Lim Sin & Thiam Beng.
A. Yes.
Q. What did you tell Lim Sin.
A. I told him Madam Tan had signed the guarantee form and Mr. Lim wanted either you or Thiam Beng to witness Madam Tan's signature. I showed him P2A.
Q. You didn't tell him Mr. Lim requested him to witness it.
A. No I gave him P2A.
Q. Then what did he do.
A. He looked at the form and telephoned Madam Tan.
Q. Where were you.
A. Sitting right in front of him.
Q. Apart from what you told us earlier did Lim Sin say anything else to Madam Tan.
A. No.
Q. Are you sure.
A. I am.
Q. Lim Sin said in evidence to Madam Tan that the document was important and she could call at his office for him to explain that to her.
A. I did not hear that.
Q. You are sure.
A. Yes.
Q. Did he say 'if you are busy I can call at your office to explain it to you.'
A. I didn't hear that.
Q. You are sure.
A. Yes the whole thing took place very fast.
Q. Did you hear him say he was a lawyer and would explain it to her if she came to his office.
A. I didn't hear that."

According to Edward Kong, all Mr. Lim Sin said, and he was sitting in front of him, was "Mummy, Edward Kong is in front of me with a bank guarantee form on the land 10 Tomlinson Road. Are you happy with the form you signed." Edward Kong also stated that he was sure that that was all the conversation that passed between Madam Tan and Mr. Lim Sin. Still under cross-examination he said he never heard Mr. Lim Sin state that the document was an important document and that he was prepared to call at her office to explain the contents to her. To say the least Madam Tan's evidence supports or corroborates Edward Kong. Madam Tan stated quite emphatically that Mr. Lim Sin never offered to go to her office to explain the Guarantee to her, neither did he tell her that a bank guarantee was a serious document. Edward Kong also said he was sure that words similar to these never passed between Mr. Lim Sin and Madam Tan. It would appear that Edward

Kong's version of the conversation that took place between Mr. Lim Sin and Madam Tan over the telephone is the correct version. In the circumstances I reject the version of Mr. Lim Sin.

The defence raised two main issues as follows: —

(1) *non est factum;*

(2) that there was no consideration moving from the bank to her for the guarantee she is alleged to have signed as the document upon which she is being sued is not one under seal.

Dealing with the first defence i.e. *non est factum,* the burden of establishing it which incidentally is a heavy burden, lies on the person seeking to avail himself of it. This statement applies generally to persons of full age and capacity, but Lord Pearson in his judgment in *Saunders* v. *Anglia Building Society,*[1] had this to say (page 979): —

"In my opinion, the plea of *non est factum* ought to be available in a proper case for the relief of a person who for permanent or temporary reasons (not limited to blindess or illiteracy) is not capable of both reading and sufficiently understanding the deed or other document to be signed. By sufficiently understanding I mean understanding at least to the point of detecting a fundamental difference between the actual document and the document as the signer had believed it to be."

"Normally, a blind or illiterate person must have had the deed read over or fully explained to him before execution" — see para. 1366 *Halsbury's* Laws, 4th Edition Vol. 12.

This plea is established if it is shown that:

(a) the document signed was fundamentally or essentially different in substance or in kind from what the signer believed it to be (a mistake about the amount of the liability involved may make such a difference); and

(b) the signer signed it with the care to be expected of a normal person of prudence.

The question that has to be asked and answered is whether or not on all the circumstances leading up to its execution, the Guarantee was so "fundamentally" or "essentially" or "basically" or "radically" or "entirely" different from the document Madam Tan believed it to be. The circumstances must be the surrounding circumstances at the time of the execution of the document and no regard must be paid to the circumstances to be found years later.

In order to answer this question Madam Tan's own evidence must be considered. Madam Tan in her evidence stated that she stopped schooling at the age of 14. She cannot read nor can she write English. She had been a land broker for 17-18 years since 1962. During this time she formed two companies. In the course of her business she met Edward Kong and advised him to purchase the said property. She advanced Edward Kong money whenever he could not pay the interest on the overdraft for which he offered her a 25% interest in the said property. In all she advanced about $270,000 to $280,000 to Edward Kong. She asked him to acknowledge this in writing but he did not do so. Before the said guarantee was signed Madam Tan went on to say that Edward Kong approached her and told her that Matthew Lim had said that since she was a property broker she was in a position to provide him (Edward Kong) the money to pay for the interest of Tomlinson Road. Edward Kong said that the Bank suggested that she be the guarantor and told her he would give her a 50% share in the said property. Edward Kong brought to her the said Guarantee for her to sign and told her that Matthew Lim had wanted her to sign the Guarantee as this was in respect of her 50% interest in the land. She was happy to sign the Guarantee as she regarded it as proof of her 50% holding in the said property. Edward Kong, she said, did not explain the Guarantee to her. He was in a hurry and asked her to sign the document quickly. She did not know that the document which she signed was a guarantee for an *unlimited* amount otherwise she would never have signed it. She never asked Edward Kong to ask Lim Sin to attest her signature. Later the same afternoon, after she had signed the Guarantee, she received a telephone call from Lim Sin who said "Mummy are you happy to sign the Guarantee in respect of the land at Tomlinson Road". To this she replied that she was as she now had a 50% share in the land. She further went on to say that Lim Sin never asked her whether she understood everything inside the Guarantee, neither did she tell Lim Sin that Edward Kong had explained everything to her, nor did she ask Lim Sin to witness her signature. Furthermore, Lim Sin never told her that a bank guarantee was a very serious document or that if she went to his office he would explain the contents of the document to her. She also said that no one from the Bank spoke to her about the Guarantee.

Under cross-examination Madam Tan admitted that on 3 previous occasions in connection with other transactions she had executed bank guarantees but on each occasion the Bank had explained the contents of the documents to her. When asked what she meant when she said she was happy to sign the Guarantee as she had a 50% share in the said property, she gave the following answer: —

"PW3 (Edward Kong) had borrowed money from me and initially offered me 25% interest in the land; it was subsequently increased to 50%. I asked PW3 to give it to me in writing confirming my 50% share in the land. He promised to do so but did nothing about it. When I executed P2 I thought it was confirmation of the fact that he had given me 50% of interest in the land."

In this regard, looking at the circumstances prevailing at the time, I have no reason to disbelieve her.

It is pertinent to note taking the evidence of Mr. Lim Sin and Edward Kong, both of whom are the Bank's witnesses, as well as the evidence of PW2, Madam Yew-Kwan Mei Sin, the Bank Officer, it is not disputed that Madam Tan is illiterate in the sense that she cannot read and write English although she admits she understands simple English.

Dealing with the evidence of Edward Kong who admitted under cross-examination that he had borrowed more than $100,000 from Madam Tan, he was asked about his approach to Madam Tan for the loan and what was said: these were his answers: —

"*Q.* Were there any discussions when you asked her for her help.

A. Yes.

Q. What were they.
A. I told her I was prepared to offer her a 50-50 basis in the land project in return for her helping out on payment of interest.
Q. When did this discussion take place.
A. Within the first year of 1973, originally she was to have 25%, another party 25%, that other party failed so gave Madam Tan 50%."

He further admitted that it was at Matthew Lim's suggestion that he approached Madam Tan to be his guarantor. He also admitted he never explained the contents to her, nor did he tell her that it was an unlimited guarantee. In fact he admitted that at the time he was himself unaware what an unlimited guarantee was; he had only discovered it on being sued. He agreed that he might have told Madam Tan to sign quickly as he was in a hurry. In fact Madam Tan said he did tell her. Edward Kong's evidence did not differ from that of Madam Tan. On the contrary they corroborated each other. We now turn to Matthew Lim who Edward Kong in evidence described as a close friend who stayed in his apartment for 8 months without paying any rent. Matthew Lim's conduct throughout the loan transaction to say the least leaves much to be desired especially from one reputed to be the Manager. When Edward Kong desired an extension of another year for his overdraft facilities, he said there would be no difficulty about that provided Edward Kong paid a 2% commitment fee which worked out to about $50,000. This amount was paid by Edward Kong. It transpired subsequently that the Bank did not charge a commitment fee so this amount was refunded to Edward Kong a year later. This incident gave rise to criminal proceedings which however are not relevant in this case. Again as Manager of the Bank it was his duty to explain the terms of the guarantee to Madam Tan as the Bank were going to accept her as a guarantor for an unlimited amount and expected to be reimbursed by her if the borrower failed to honour his obligations and being fully aware of her illiteracy in the English language he should have satisfied himself that she understood the contents of the said Guarantee before she signed the said document. This he did not do but left it to Edward Kong to obtain the signatures of both Madam Tan and Mr. Lim Sin. Having obtained their signatures Edward Kong returned the Guarantee to Matthew Lim. The only inference that can be drawn is that the Bank appointed Edward Kong their agent for this transaction and they are therefore liable for the default of their agent: Edward Kong too was fully aware that Madam Tan could not read or write and he as agent for the Bank failed to read and explain the contents of the Guarantee to Madam Tan.

Now we come to Mr. Lim Sin. Under cross-examination he said he was not acting for anyone when he witnessed Madam Tan's signature. Matthew Lim when he gave the Guarantee to Edward Kong instructed him to get Lim Sin or Thiam Beng, his partner, to witness Madam Tan's signature. In Exhibit P2A, he was requested by the Bank to witness Madam Tan's signature. Be that as it may, Madam Tan was his mother-in-law; Mr. Lim Sin was fully aware of the fact that she was not educated in English. She had not much formal education as he put it and being an advocate and solicitor he should have exercised greater caution and care than could be expected of an ordinary man placed in similar circumstances by reading and explaining the document to her and satisfying himself that she understood it before he appended his signature to it. But what did he do. He asked Madam Tan over the telephone whether she was happy to sign a bank guarantee form pertaining to 10 Tomlinson Road. On receiving an affirmative reply he also signed it.

It is pertinent to note that all three of them i.e. Matthew Lim, Edward Kong and Lim Sin did not read and explain the Guarantee to Madam Tan when they were fully aware that she was illiterate — a woman with little or no education. Furthermore she was totally unaware that the Guarantee was for an unlimited amount and so was Edward Kong for that matter.

From the evidence I find that the Guarantee was not read and explained to Madam Tan before she executed it and the Bank and its agents have failed to discharge their burden. Furthermore Madam Tan was persuaded if not urged to sign the Guarantee quickly by Edward Kong. It was so represented to her in such a manner as to show that the document she was signing was to guarantee payment of interest on the said property and in return she was being given a 50% share on the land whereas in fact the document on which she is being sued however seeks to make her liable for all monies, without limit, advanced to the 1st defendant on its account with the Bank right from the very beginning.

In this context both Lord Reid and Viscount Dilhorne in the *Saunders* case, *supra*, were of the view that the document signed must be radically different in character from that which the signer thought it was. In Lord Wilberforce's view, a document should be held void "when the transaction which the document purports to effect is essentially different in substance or in kind from the transaction intended".

From the evidence and the reasons set out above in my view there is a radical or fundamental difference from what Madam Tan believed she was signing and the document upon which she is being sued. The next question for consideration is whether Madam Tan in all the circumstances surrounding the transaction can be said to have acted reasonably and prudently in accepting the representation of Edward Kong and signing the document. It is not disputed that in 1973 whenever Edward Kong could not pay his interest in the overdraft facilities or when he wanted any advance he would borrow from Madam Tan who lent him the money without any acknowledgment despite her requests. In exchange he promised her a 25% share in the said property. At the end of 1973 or early 1974 when he was contemplating requesting a further extension of facilities he approached Madam Tan to be his guarantor, this time offering her 50% interest in the said property. Again she requested some form of acknowledgment. When Edward Kong approached her and asked her to sign the document as it referred to the guarantee of 10 Tomlinson Road she readily did so for by this time she had advanced more than

$200,000 to Edward Kong and was anxious to see that the interest in the land which she had been promised 50% share was safeguarded by some document. She had no reason whatever to doubt or suspect Edward Kong as he had promised her 50% share in the property. She was urged to sign quickly and did so believing him and relying on Edward Kong's promise to her.

Viscount Dilhorne in the *Saunders* case, *supra*, was of the view that the person signing must not have been careless when signing. The person "who signs the document must exercise reasonable care and what amounts to reasonable care will depend on the circumstances of the case and the nature of the document which it is thought is being signed." Byles J. in *Foster* v. *Mackinnon*,[2] said —

"at least if there be no negligence, the signature so obtained is of no force. And it is invalid, not merely on the ground of fraud, if fraud exists, but on the ground that the mind of the signer did not accompany the signature; in other words, that he never intended to sign, and therefore in contemplation of law never did sign, the contract to which his name is appended."

For all these reasons and taking all the conditions prevailing at the time when Madam Tan signed the document, in my view she had in so signing acted reasonably and prudently in the circumstances. In my judgment Madam Tan has successfully established the plea of *non est factum*. In view of my finding, the necessity of considering the other defences raised by Madam Tan does not arise. The plaintiffs' claim is dismissed with costs.

Claim dismissed.

Solicitors: *Rodyk & Davidson; J.B. Jeyaretnam & Co.*

TEO BOON HONG v. TAN EWE WAH

[D.C.A. (Sinnathuray J.) September 15, 1980]
[Singapore — District Court Appeal No. 93 of 1979]

Landlord and Tenant — Rent-controlled premises — Breach of regulations — Landlord convicted — Claim for possession — Scope of s. 15(1)(h) of Control of Rent Act (Cap. 266) — Environmental Public Health (Public Cleansing) Regulations, 1970, reg. 26(1)(a) — Environmental Public Health (Food Establishments) Regulations, 1973, reg. 15.

The appellant in this case purchased a rent-controlled premises in 1960. In 1964 he obtained an eating house licence to operate a coffee shop at the premises. In 1966 he let the premises including the business to the respondent's husband at a monthly rent of $220. Upon the death of the respondent's husband, in April 1975, the appellant acknowledged the respondent as the tenant.

In November 1976, the appellant pleaded guilty in a Magistrate's Court on charges of having committed offences under Regulation 26(1)(a) of the Environmental Public Health (Public Cleansing) Regulations 1970. On October 26, 1978, he pleaded guilty on a charge of having committed an offence under regulation 15 of the Environmental Public Health (Food Establishments) Regulations, 1973. He was convicted and fined for all the said charges. The appellant said the only reason he attended court, and pleaded guilty on the three occasions was because the notices were issued in his name. They were handed to him by one of the stall operators in the premises.

The appellant claimed possession of the premises under section 15(1)(h) of the Control of Rent Act (Cap. 266). At the close of the appellant's case, counsel for the respondent elected not to call evidence for the defence and made a submission of no case to meet. The learned District Judge dismissed the appellant's claim and hence this appeal.

Held, allowing the appeal: the appellant had, at the close of his case, made out a *prima facie* case, which in the event, the respondent not having given evidence, entitled the appellant to judgment.

Cases referred to:-

(1) *Tay Sai Hiang* v. *Tan Ee Keok* [1968] 1 M.L.J. 234.

(2) *Ho Tong Cheong & Ors.* v. *Oversea-Chinese Banking Corporation Ltd.* [1967] 2 M.L.J. 70.

DISTRICT COURT APPEAL.

Joseph Ang for the appellant.

Mah Kok Weng for the respondent.

Cur. Adv. Vult.

Sinnathuray J.: This appeal arises from a claim by the landlord (appellant) against the tenant (respondent) for possession of a rent-controlled premises, No. 281 Changi Road. The facts are these.

The appellant purchased the premises in 1960. In 1964 he obtained an eating house licence to operate a coffee shop at the premises. In 1966 he let the premises including the business to the respondent's husband at a monthly rent of $220. Upon the death of her husband, in April 1975, the appellant acknowledged the respondent as the tenant.

At the hearing in the District Court, the appellant gave evidence that in November 1976, on two occasions, he pleaded guilty in a Magistrate's Court on charges of having committed offences under Regulation 26(1)(a) of the Environmental Public Health (Public Cleansing) Regulations 1970, namely that on October 16 and November 5 respectively, he did permit the footway of the premises to be obstructed with tables and chairs. He further gave evidence that on October 26, 1978, he pleaded guilty on a charge that on October 6, 1978 he did place outside the food establishment tables and chairs in connection with the sale of food, an offence under Regulation 15 of the Environmental Public Health (Food Establishments) Regulations, 1973. On each of the three occasions he was convicted and a fine imposed.

In his cross-examination the appellant said he did not permit anyone to place tables and chairs as alleged in the first two notices. He also denied having placed tables and chairs as alleged in the third notice. He said the only reason he attended court, and pleaded guilty on the three occasions was because the notices were issued in his name. They were handed to him by one of the stall operators in the premises.

The one other witness for the appellant, at the hearing, was a Public Health Inspector who gave evidence of facts that made out the charge set out in the third notice. He said he ascertained the licensee of the coffee shop to be the appellant, and as the appellant was not present, he handed the notice to someone in the premises with instructions to hand it to him. As to why the notice was issued against the appellant, the Inspector explained that action is normally taken against the holder of the eating house licence. In the context he said that there are two